



COLOMBIA – SOGI LEGISLATION COUNTRY REPORT
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Summary

In general, most of the achievements concerning LGBT human rights have been as a result of judicial decisions, particularly by the Constitutional Court. This is due in part to the 1991 constitutional reforms that created the Court and also the procedural vehicle of tutela, which made it easier for applicants to bring cases.

The State has a constitutional obligation to adopt strategies for the benefit of “marginalized groups” ([Colombian Constitution](#), 1991).

Discrimination on the basis of sexual orientation is a criminal offence ([Criminal Code Amendment, Law 1236](#), 2008).

Access to health care is guaranteed without discrimination on the basis of sexual orientation ([Law 1438](#), 2011).

The Constitutional Court invalidated a law which categorized same-sex sexual activity as a ground of misconduct in the teaching profession on the ground that it violated an individual’s right to free development of personality and would undermine the value of pluralism ([Sentencia C-481/98, 1998](#)).

Same-sex sexual activity was decriminalized in 1980, and the age of consent (14) is the same for opposite-sex and same-sex sexual activity ([Criminal Code](#)).

In 2011, the Colombian Constitutional Court upheld the constitutionality of the definition of marriage as being limited to relationships between “a man and a woman”. However, it also held that same-sex couples have the right to form a family. The Court has given Congress two years to draft legislation enabling same-sex couples to enter into legally-binding relationships with the same legal rights and protections as enjoyed by opposite-sex couples in “marriages” ([Decision C-283/11, 2011](#)).

In 2007, the Constitutional Court struck out language limiting the application of the economic protections afforded under [Law 54 of 1990](#) to only opposite-sex couples in civil unions. It concluded that excluding same-sex couples from civil unions violated constitutional principles of respect for human dignity, the state's duty to protect all persons equally and the fundamental right to freely develop one's personality (*Sentencia C-075/07, 2007*). Similarly, in 2009, the Constitutional Court ruled that same-sex couples must be extended all of the same rights offered to cohabitating opposite-sex couples. These rights include: legal guardianship; migration rights to acquire Colombian nationality; and rights to government benefits in health care, educational programs and family housing. Couples are entitled to these rights after living together for two years and by registering their partnership ([Decision C-029/09, 2009](#)).

In a series of decisions, the Constitutional Court also extended social security and health benefits to same-sex civil unions (*Sentencia C-811/07, 2007*), concluded that the refusal to extend health benefits to a same-sex partner was discriminatory (*Sentencia T-856/07, 2007*) and extended pension benefits to same-sex civil unions (*Sentencia C-336/08, 2008*).

In 1999, the Constitutional Court held that the Armed Forces cannot bar gay and lesbian individuals from military service ([Decision C-507/99, 1999](#)).

In 2012, the Constitutional Court ruled in favour of Chandler Burr, a gay American citizen seeking custody of his Colombian-born children. He had legally adopted two Colombian children, but prior to his departure revealed his sexual orientation to an official of Colombia's Family Welfare Institute. He was then blocked from taking his sons from the country. The Court held that removing the children ignored their rights and the rights of Burr to due process and family unity (*Decision T-276/12, 2012*).

There are no prerequisites for name change in Colombia. An individual must simply appear before a notary with a photocopy of their citizenship papers and the actual copy of their birth certificate. Names can only be changed once ([Registro Extemporáneo, Correcciones del Registro del Estado Civil y Cambio de Nombre, Decreto 999, 1988](#)).

Individuals can legally change their gender after sex reassignment surgery (SRS).

Hormone therapy is funded through the public health system, but requires a psychiatric diagnosis. It is also done without medical supervision in a number of pharmacies. These policies are part of the Colombian Social Security System, which is regulated by the national government.

The Colombian public health system, national health insurance and private health insurance cover a number of gender reassignment therapies including breast augmentation, vaginoplasty and mastectomy. There are also a number of unfunded GRTs offered in Colombia, including buttock/hip augmentation, chest reconstruction, hair removal, liposuction and hysterectomy. A psychiatric evaluation is required before the

GRTs will be performed. These policies are part of the Colombian Social Security System, which is regulated by the national government.

The Constitutional Court has issued a series of decisions concerning the rights of intersex children. It held that the sex of a child cannot be altered without the child's informed consent (*Sentencia T-447/95*, 1995), that parental consent can only be substituted if the consent was informed, qualified and persistent and that surgery on children above the age of five should be postponed until the child is able to consent for his or herself ([Sentencia 337/99, 1999](#)).

Legal Provisions

ANTI-DISCRIMINATION

[Constitución política de Colombia, 1991](#): Although sexual orientation is not included as a prohibited ground of discrimination, Article 13 establishes a positive duty on the state to ensure equality for all individuals and to adopt strategies for the benefit of "marginalized groups". In *Sentencia C-481/98*, the Constitutional Court held that discrimination on the basis of sexual orientation would violate the equal protection guarantee of Article 13.

Article 13 (In Section II, Subsection 1: Fundamental Rights):

"All individuals are born free and equal before the law and are entitled to equal protection and treatment by the authorities, and to enjoy the same rights, freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion or ideology.

The State will promote the conditions necessary in order that equality may be real and effective and will adopt measures in favour of groups which are discriminated against or marginalized.

The State will especially protect those individuals who, because of their economic, physical or mental condition, are in obviously vulnerable circumstances and will sanction any abuse or ill-treatment perpetrated against them."

<http://www.banrep.gov.co/regimen/resoluciones/cp91.pdf>

[Law 1438 – Reform of the Social Security System, 2011](#): This legislation modified *Law 100* (1993) (which governs Colombia's Social Security System) to guarantee access to health care without discrimination on the basis of sexual orientation.

Article 3: Principles of the General Health Care System:

“3.3 Equality: All Colombians are guaranteed access to the Health Care System without discrimination based on culture, sex, race, nationality, sexual orientation, religion, age or economic ability, notwithstanding the dominant rights of children.”

http://www.secretariasenado.gov.co/senado/basedoc/ley/2011/ley_1438_2011.html

HATE CRIMES

Law 1236, 2008: This legislation added a section to the Colombian *Criminal Code*, criminalizing discrimination based on sexual orientation. Individuals found guilty of hate crimes are subject to fines and prison terms of one to 3 years.

Article 134A: Racist or Discriminatory Acts:

“Those who arbitrarily impede, obstruct or restrain the exercise of the rights of individuals based on race, nationality, sex or sexual orientation will be imprisoned for twelve to thirty-six months and a fine of ten to fifteen times the minimum legal monthly salary.”

http://www.legis.com.co/BancoMedios/Documentos%20PDF/ley_1482.pdf

SEXUAL ACTIVITY AND AGE OF CONSENT

Law 1236, 2008 - Criminal Code: This law equalises the age of consent (14) for opposite-sex and same-sex sexual activity.